

Service Date: June 3, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF The Request of	)	
Ronan Telephone Company To Offer DS1	)	UTILITY DIVISION
Digital Switched Service As a New	)	DOCKET N98.2.36
Detariffed Service	)	ORDER NO. 6071

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ORDER ON RECONSIDERATION AND APPLICATION

INTRODUCTION

1. Ronan Telephone Company (RTC) filed an application requesting approval of a detariffed "new service" on February 23, 1998, pursuant to § 69-3-810, MCA. On March 28, 1998, the Commission voted 4-1 to approve RTC's proposal to offer DS1 Digital Switched Service subject to conditions. The Commission approved the filing on a tariffed basis rather than detariffed as RTC had requested, and also required RTC to report its actual cost and revenue experience for this service to the Commission after it had provided it for 12 months.

2. RTC asked for reconsideration of the Commission's decision on April 20, 1998. At the same time it filed the Motion for Reconsideration, RTC also filed an application for detariffing of the service pursuant to another provision of the Montana Telecommunications Act (MTA), § 69-3-807, MCA.

COMMISSION DECISION

3. The Notice of Commission Action issued after the March 24, 1998 work session states that Ronan's request to offer DS1 Digital Switched Service (DS1 DSS) as a detariffed service is not approved because it is not appropriate under the Montana Telecommunications Act (MTA) to detariff services that provide local exchange access. DS1 DSS provides subscribers with local exchange access and is a replacement for regulated business or residential local phone service, although it is unlikely that a residential customer would subscribe to the service.

Section 69-3-804(4) of the MTA prohibits detariffing of noncompetitive local exchange access to end users.

4. The Commission approved the filing on a tariffed basis rather than delay the offering of DS1 DSS to RTC's customers. In Request of Ronan Telephone Company to Offer Switched 56 Kilobit Service on a Detariffed Basis, Docket No. N95.8.119, Order No. 5941 (Sept. 16, 1996) (Switched 56 Order), the Commission treated another application similarly.

5. The Notice of Commission Action also noted the ARM 38.5.2735(1)(f) requires carriers to provide the relevant incremental cost of providing the service, including supporting work papers and analysis. RTC did not provide cost information with its DS1 DSS filing; instead, it offered to report its actual cost and revenue experience for DS1 DSS after 12 months of offering it. The Commission directed RTC to file such a report after 12 months.

#### The Motion for Reconsideration

6. RTC's argument for reconsideration of the decision to approve DS1 DSS service as "tariffed" is: (1) a straightforward application of the provisions of the "new services" statute requires approval as detariffed because the only criteria for approval is whether the proposed service falls within the definition of "new service" in § 69-3-810, MCA; (2) the Commission's reference to § 69-3-807(4) is inappropriate because the "new services" statute stands on its own and does not reference or incorporate any other provision of law; and (3) the Commission has only two alternatives for action on a tariff filing. It can either approve as filed or reject it *in toto*. We address these three arguments below.

First, RTC argues that § 69-3-810, MCA, on its face states that the only criteria for approval under § 810 is whether it falls within the definition of "new service," namely: "any service that is introduced separately or in combination with other services and that is not functionally required to provide local exchange service or that is not a repackaged current service or a direct replacement for a regulated telecommunications service." Regarding this definition, RTC argues that DS1 is not functionally required to provide local exchange service, and rather that it is an optional, advanced service, which is not feasible or required for basic subscribers. RTC states,

. . . [DS1 DSS] provides advanced features, and a minimum of 12 trunks per service. The vast majority of RTC subscribers have absolutely no need for this service, and this tariff will not effect their rates. This service is not required for local service.

Motion for Reconsideration, at 2 (emphasis original).

7. RTC obfuscates the definition of "local exchange service" with that of plain old telephone service (POTS). Although DS1 DSS is not POTS and does not come within the definition of "basic service" for purposes of universal service funding, it includes trunks which come within the definition of local exchange service. The above-quoted argument--that DS1 DSS service is not required in order to provide local service to the vast majority of RTC subscribers--is a smokescreen. DS1 is in fact local exchange service--albeit with additional advanced services included.

8. RTC also argues that this filing does not repackage any current RTC service. Although RTC is not presently offering a similar package of services, the filing does repackage RTC trunks with advanced capabilities. Further, RTC states that this is not a direct replacement for a regulated telecommunications service and does not compare or compete with the basic individual business or residential subscriber line.

9. The question is not whether it compares or competes with basic residential or business lines; it is whether it is a replacement for another regulated service. RTC states it is intended to provide advanced connections to the unregulated PBS market, high capacity, and to provide data transmission for switched flex 56 kbit dial up internet access. It does this using regulated trunks that also are used for other purposes than internet access.

10. Analysis of this Motion is simple and straightforward. Very simply, the service is local exchange access. It also is not a competitive service.<sup>1</sup> Noncompetitive local exchange access may not be detariffed. Section 69-3-807(4), MCA.

11. RTC's second argument for reconsideration is that the Commission's reference to

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<sup>1</sup>See discussion of the competitive nature of DS1 DSS service *infra*, p. 5.

§ 807(4) is misguided because the "new services" statute "stands on its own and does not reference or incorporate any other provision of law," especially § 807(4). Motion, at 2. RTC states that it is inappropriate to apply other specific sections of the MTA to this matter other than the general policy section, § 69-3-802, MCA.

12. RTC has not persuasively supported this argument. It quotes ARM 38.5.2730 to support its position that §§ 810, 807(2) and (3), and 807(4) present three detariffing alternatives which are separate and distinct provisions. According to this argument, § 807(4), which provides that noncompetitive local exchange service and carrier access services may not be detariffed, is the only section that is limited by the restriction on noncompetitive local exchange access to end-users.

13. These sections must be read together, and when this is done, it is apparent that § 807(4) is the least restrictive of the three alternatives. However, even though § 69-3-807(4) gives the Commission the greatest discretion of the three in making decisions on detariffing, it also includes a limitation on that discretion. Clearly, if a limitation applies to the most discretionary alternative, it must apply to the other alternatives as well. The sections of the MTA should not be read as completely separate sections, but rather should be harmonized to determine the meaning of provisions included therein. We conclude that the Commission must refer to § 69-3-807(4) when making decisions pursuant to § 69-3-810.

14. RTC's third argument--that the Commission may only approve or disapprove a tariff filing--was previously addressed extensively and rejected in the Switched 56 Order. In the Switched 56 Order, the Commission concluded that it can approve a tariff filing with modifications.

15. For the reasons discussed above, RTC's motion for reconsideration should be denied. As discussed in more detail below, RTC has not demonstrated that DS1 DSS service is *competitive* local exchange access which would permit detariffing.

The Application for detariffing pursuant to  
§§ 69-3-807(2) and (3), or § 69-3-807(4), MCA.

Detariffing according to the alternatives in either subsections (2) and (3) of § 69-3-807, or subsection (4) of § 69-3-807, presupposes a finding that the service is not restricted by the last sentence in subsection (4) which states that "noncompetitive local exchange access to end-users . . . may not be detariffed."

16. RTC argues that the service is not "noncompetitive local exchange access service to end-users"; rather, RTC claims it is a "competitive offering within RTC's service area, with PTI and probably other providers as well." RTC also cites the interim pricing flexibility the Commission approved in U S WEST's flexible Pricing Docket (D97.7.125).

17. RTC's argument that the U S WEST pricing flexibility interim approval is comparative here should be dismissed because there clearly is more than one provider providing competitive local exchange access in Terry and Glendive to more than just a few end-users.

18. Its argument that DS1 DSS service is competitive is similarly unconvincing. RTC has cited no examples of competitive entry in its exchange for this service. However, we understand that RTC does have one potential customer, an internet provider, that is anxious to obtain the service. That customer has stated that he had no alternative to RTC's DS1 DSS service. He further stated that PTI would not provide the service to him.

19. The road to a competitive market should contain more than one path and should recognize that one size does not fit all. With a noncompetitive service like DS1 DSS, the Commission should not rush to detariff when quick response to competitive pressure is not required. For circumstances such as this, where only one or a few possible subscribers to a service exist, the company has a suitable alternative. Pursuant to § 69-3-808, MCA, RTC may request forbearance if it is faced with an actual competitor for this service. In addition, RTC enjoys pricing flexibility as a small carrier under Title 69, Chapter 3, part 9, MCA.

#### CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Ronan Telephone Company is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. DS1 Digital Switched Service is a "regulated telecommunications service" as defined by § 69-3-803(6), MCA. The Commission properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

3. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

5. The restriction in § 69-3-807(4), MCA, which prohibits detariffing of noncompetitive local exchange access, is a restriction on Commission discretion which applies to all applications for detariffing services, whether filed pursuant to § 69-3-807, MCA, or § 69-3-810, MCA.

#### ORDER

THEREFORE, based upon the foregoing, it is ORDERED that RTC's Motion for Reconsideration is denied and its application for approval of DS1 Digital Switched Service pursuant to § 69-3-807, MCA, is not approved.

DONE AND DATED this 27th day of May, 1998, by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner, Dissenting

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. *See* ARM 38.2.4806.